**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Renewal Application of Verde Energy USA Ohio, LLC for Certification as a Retail Natural Gas Marketer. | )  )  )  ) | Case No. 13-2164-GA-CRS |

**REPLY TO VERDE’S MEMO CONTRA OCC’S MOTION TO INTERVENE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

Verde Energy is a rip-off artist that has hurt Ohioans by misusing its PUCO certificate. Verde should be kicked out of the state by the PUCO. The PUCO Staff said that Verde lacks “the fitness or managerial capability to provide competitive services in the state of Ohio.”[[1]](#footnote-2) IGS stated that Verde’s “abuses reflect poorly upon the company, its parent, Spark Energy Holdco, LLC [], Spark’s affiliates, and the Ohio competitive retail supply community as a whole.”[[2]](#footnote-3) Unfortunately for consumers, Verde wants to stay in Ohio. And in a recent settlement between the PUCO Staff and Verde, Verde inexplicably would be allowed to stay (subject to Verde’s agreement to stop marketing and enrolling customers until October 2020 – less than one year from now.)[[3]](#footnote-4) Thus, the Ohio Consumers’ Counsel

(“OCC”) has filed to represent consumers in this case where Verde is asking the PUCO for a renewal of its gas marketing certificate.

Recently, OCC and the PUCO Staff asked the PUCO to suspend this process to prevent Verde’s request from being automatically approved. The PUCO did suspend the process.[[4]](#footnote-5)

True to form, this company that has deceived Ohioans now wants to deny Ohioans their voice through OCC in this case. Verde is opposing OCC’s intervention. There is little that is right about Verde, including that Verde is wrong in claiming that OCC can be denied intervention for consumers under Ohio law.[[5]](#footnote-6)

Incredibly, after all its bad deeds, Verde asks the PUCO for authority to *continue* marketing natural gas service to Ohio customers. And, shockingly, Verde seeks to *expand* its service to customers in the territory of Vectren Energy Delivery of Ohio (“Vectren”).[[6]](#footnote-7) Verde requests this authority despite its refusal in the PUCO investigation case to refund a single penny to the natural gas customers it has harmed.[[7]](#footnote-8) Verde needs to pack its bags, leave the state and free Ohioans from its bad acts. Ohio law permits OCC to intervene in this case to say that, among other things, for consumer protection.

# II. THE PUCO SHOULD GRANT OCC’S MOTION TO INTERVENE TO GIVE A VOICE TO THE CONSUMERS THAT VERDE HAS PREYED UPON.

Here is some precedent that Verde neglected to mention in its opposition to OCC’s intervention. The Supreme Court of Ohio has held that “intervention ought to be *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”[[8]](#footnote-9) In the “absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”[[9]](#footnote-10)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. Verde does not, and cannot, demonstrate otherwise. For these reasons alone, the PUCO should grant OCC’s Motion to Intervene.

Verde argues that the PUCO should deny OCC’s Motion to Intervene because OCC has already had an opportunity to litigate the issues arising in this case.[[10]](#footnote-11) Verde is wrong. OCC’s involvement in the case for an investigation of Verde is not a bar to OCC’s involvement in this Verde initiative to renew its certificate. Far from it. OCC is doing exactly what it should be doing for consumers by intervening in this case.

Consumers could be “adversely affected”[[11]](#footnote-12) if Verde is allowed to continue marketing natural gas services in this state. OCC regularly represents the interests of Ohio residential consumers in PUCO cases against the same parties, with the same decision makers, and with similar issues in different proceedings.[[12]](#footnote-13) Verde’s claim that OCC should now be precluded from representing the interests of Ohio residential consumers in this case has no merit. Verde’s conflation of this case and the investigation overlooks the key issues of this case: whether Verde’s certificate should be renewed and expanded to serve customers in the Vectren service territory.[[13]](#footnote-14)

Verde also asserts that “OCC comes to this proceeding with no new or different facts.”[[14]](#footnote-15) The facts are that Verde is an awful company. Those facts aren’t necessarily going to change in cases about Verde, even though the legal framework of different cases will change. But Ohio law does not preclude a party from presenting similar facts in different cases involving different legal issues, as is the situation here. Nor should that be a criterion for the PUCO to consider when ruling upon a motion to intervene involving consumer protection. Remember, the Supreme Court of Ohio admonished the PUCO that intervention is to be “*liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”[[15]](#footnote-16)

Verde’s argument that there are no new and different facts in this proceeding is also inaccurate. Verde’s Renewal Application was filed on November 7, 2019 – after the hearing was held in Case No. 19-0958-GE-COI. The Renewal Application sets forth facts that have not been investigated and that are not in the evidentiary record of Case No. 19-0958-GE-COI. For example, Verde indicates in the Renewal Application that it seeks to expand its service into Vectren’s service territory, even though Verde has not previously provided service to those customers.[[16]](#footnote-17) In addition, Exhibit B-4 to the Renewal Application identifies twenty-one investigations in Ohio and other states regarding Verde or its affiliates. To explore these issues and others for consumer protection, OCC’s intervention should be granted.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. Verde and adversely affected consumers go hand in hand.

Verde contends that OCC’s intervention will unduly prolong this proceeding by allowing OCC to “rehash” arguments from the Verde investigation case.[[17]](#footnote-18) But as explained above, the Renewal Application (which was filed after the Verde investigation case evidentiary hearing) raises new facts. Further, the Attorney Examiner has already suspended the automatic renewal process in this case on the recommendation of the PUCO Staff.[[18]](#footnote-19) In addition, as OCC explained in its Motion to Intervene, OCC’s longstanding expertise and experience in PUCO proceedings will duly allow for the efficient processing of the case with consideration of the public interest. [[19]](#footnote-20)

And if this case goes to hearing or does not get resolved as quickly as Verde would like, that is not an *undue* delay. It would be time that is necessary for due process and to unwind the complexity of what Verde has done to hurt Ohio natural gas consumers. Consumers have a real and substantial interest in the matter. It would be particularly unjust to deny OCC’s current Motion to Intervene based on Verde’s pure speculation as to what Verde believes OCC may argue in this case.

Finally, OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider to equitably and lawfully decide the case in the public interest. The PUCO should grant OCC’s Motion to Intervene because OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention.

# III. THE PUCO SHOULD DENY VERDE’S APPLICATION TO RENEW ITS AUTHORITY TO PROVIDE GAS MARKETING SERVICES TO OHIO CONSUMERS.

Ohio law, at R.C. 4929.20(A), requires that gas marketers like Verde must have the “managerial, technical, and financial capability” to provide service to Ohio consumers. It is the gas marketer’s burden to demonstrate that it has that capability. And if a gas marketer does not have that managerial, technical, and financial capability to provide service, Ohio Adm. Code 4901:1-27-09(D) permits the PUCO to deny an application for certification renewal. The PUCO Staff has determined that Verde does not have the managerial capability to provide adequate service to Ohio consumers.[[20]](#footnote-21) And Verde has provided no information whatsoever in its Renewal Application in this case to demonstrate that it does have that capability.

In addition, permitting a managerially unfit marketer like Verde to continue to provide service harms competition in Ohio. In the Verde investigation case, intervenor Interstate Gas Supply (“IGS”) stated that Verde’s “abuses reflect poorly upon the company, its parent, Spark Energy Holdco, LLC [], Spark’s affiliates, and the Ohio competitive retail supply community as a whole.”[[21]](#footnote-22) If Ohio consumers cannot trust that their energy suppliers will follow the law, competition in Ohio will suffer. The PUCO’s rules specifically provide that the PUCO may deny a gas marketer the authority to serve Ohio consumers if it has engaged in anticompetitive acts.[[22]](#footnote-23)

Accordingly, the PUCO should deny Verde’s application to renew its certificate to provide gas service to Ohioans.

Verde’s Renewal Application in this case also demonstrates the “systemic”[[23]](#footnote-24) issues plaguing Verde’s ability to serve customers. Verde’s Exhibit B-4 to the Renewal Application, which contains Verde’s “Disclosure of Liabilities and Investigations,” identifies *twenty-one* investigations against Verde and its affiliates owned by Spark in the State of Ohio and other states in just 2018 and 2019.

These investigations include the Verde investigation currently pending before the PUCO in Case No. 19-958-GE-COI and another investigation by the Ohio Attorney General (Investigation Docket No. 577403) concerning Verde’s alleged violations of the Ohio Consumer Sales Practices Act (R.C. § 1345.01).[[24]](#footnote-25) Moreover, Exhibit B-5 to Verde’s Renewal Application indicates that the Texas Public Utilities Commission affirmatively determined that Spark violated consumer protection laws in Texas. The PUCO would be justified in denying Verde’s Renewal Application for these reasons alone.

**IV. CONCLUSION**

OCC’s Motion to Intervene should be granted. OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. That is all that is required for intervention. Verde has not demonstrated through its Renewal Application that it has the managerial, technical, and financial capability to serve customers in Ohio. And OCC should be granted intervention to say that, among other things, and to give consumers a voice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply To Verde’s Memo Contra OCC’s Motion To Intervene by the Office of the Ohio Consumers’ Counselwas served on the persons stated below via electronic transmission, this 13th day of December 2019.

*/s/* *Angela D. O’Brien*

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1. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*,Case No. 19-0958-GE-COI, Staff Report (May 29, 2019) (“Staff Report”), at 27. [↑](#footnote-ref-2)
2. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*,Case No. 19-0958-GE-COI, Initial Post-Hearing Brief of Interstate Gas Supply, Inc., at 3. [↑](#footnote-ref-3)
3. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0958-GE-COI, Joint Stipulation and Recommendation, at 3. [↑](#footnote-ref-4)
4. Attorney ExaminerEntry (December 4, 2019). [↑](#footnote-ref-5)
5. On April 16, 2019, the PUCO Staff filed a letter *in this docket* stating that Verde (1) used inaccurate caller identification information, (2) used robo-calling with automated messages including misleading and deceptive information, (3) provided misleading information during telemarketing solicitations, (4) was unclear in providing its terms and conditions of service to customers, (5) could not provide signed contracts for customers enrolled via door-to-door sales, (6) completed third-party verifications without the necessary requirements, and (7) failed to send expiration notices to customers. [↑](#footnote-ref-6)
6. Verde Renewal Application, at p. 4 (Response to A-13). [↑](#footnote-ref-7)
7. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0958-GE-COI, Joint Stipulation and Recommendation, at 4 (Verde’s re-rate under its settlement with the PUCO Staff is limited only to electric residential customers.). [↑](#footnote-ref-8)
8. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶20 (2006) (emphasis added). [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. Verde Memorandum Contra (December 6, 2019) at 4-5. [↑](#footnote-ref-11)
11. R.C. 4903.221. [↑](#footnote-ref-12)
12. *See e.g. In the Matter of the Application of Dayton Power and Light Company for Extension of Its Distribution Modernization Rider*, Case No. 19-0162-EL-RDR and *In the Matter of the Application of Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 16-0395-EL-SSO; *See also In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO and *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for an Extension of the Distribution Modernization Rider*, Case No. 19-0361-EL-RDR. [↑](#footnote-ref-13)
13. The *revocation* of Verde’s certificate was one of the proposed penalties in the Verde Investigation*.* *See* Staff Report, at 25. Here it is *Verde’s burden* to show it is fit for a certificate, a burden that Verde does not meet. [↑](#footnote-ref-14)
14. Verde Memorandum Contra, at 4. [↑](#footnote-ref-15)
15. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶20 (2006) (emphasis added). [↑](#footnote-ref-16)
16. Verde Renewal Application, at 4 (Response to A-13). [↑](#footnote-ref-17)
17. Verde Memorandum Contra, at 4. [↑](#footnote-ref-18)
18. Attorney Examiner Entry (December 4, 2019). [↑](#footnote-ref-19)
19. *See* OCC Motion to Intervene, at 9. [↑](#footnote-ref-20)
20. Staff Report, at 27. [↑](#footnote-ref-21)
21. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*,Case No. 19-0958-GE-COI, Initial Post-Hearing Brief of Interstate Gas Supply, Inc., at 3. [↑](#footnote-ref-22)
22. Ohio Adm. Code 4901:1-27-09(D) and Ohio Adm. Code 4901:1-27-13(E)(9). [↑](#footnote-ref-23)
23. Staff Report, at 5. [↑](#footnote-ref-24)
24. Verde Renewal Application, Exhibit B-4. [↑](#footnote-ref-25)